

Gitalaxmi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 1 OF 2021
WITH
INTERIM APPLICATION NO. 1 OF 2021**

Shri. Uddhav Hari Patil ... Applicant

Vs.

Shri. Uttam Ananda Patil And Ors. ... Respondents

Mr. Nikhil N. Pawar for Applicant.

Mr. S. A. Rajeshirke a/w Mr. Shubham Vasekar and Mr. Gautam R. Kulkarni for Respondent Nos. 1 to 4.

CORAM : GAURI GODSE, J.

DATED : 10th DECEMBER 2024.

ORDER :

1. Heard learned counsels for the parties.
2. This Second Appeal is preferred by Defendant No. 1 challenging the concurrent judgments and decrees dismissing his counter claim and allowing the Suit filed by Respondent Nos. 1 and 2 for possession. The Suit for possession is decreed on the ground of title of Respondent Nos. 1 and 2 as the owners. The counter claim for specific performance is concurrently dismissed by holding that the Appellant was unable to prove execution of the agreement

for sale.

3. Learned counsel for the Appellant submits that as per the terms of agreement for sale, time was not the essence of the contract. He submits that the sale deed was to be executed after necessary permission as there was restriction in view of the acquisition under the Maharashtra Project Affected Persons Rehabilitation Act, 1999 ("the said Act"). He submits that after the endorsement regarding acquisition for the said Act was deleted, Defendant No. 1 filed the counter claim for specific performance. He submits that the Appellant was put in possession pursuant to the agreement for sale; hence he was entitled to protect his possession. Learned counsel for the Appellant further submits that since time was not the essence of the contract, both the Courts have erred in dismissing the counter claim, as barred by limitation. He further submits that in view of the agreement in favour of Defendant No. 1, the Plaintiffs were not entitled to seek possession from Defendant No. 1. He thus submits that the Second Appeal raises substantial questions of law on the ground that both the Courts failed to correctly appreciate the pleadings and the supporting evidence of Defendant No. 1.

4. Learned counsel for Respondent Nos. 1 and 2 supports the

impugned judgments and decrees. He submits that Defendant No. 1 claimed to be in possession pursuant to the lease deed executed by the father of Plaintiff No. 1. He however submits that Defendant No. 1 failed to produce any supporting evidence regarding execution of the lease deed. He submits that both the Courts have concurrently accepted the Plaintiffs' ownership over the suit property. He further submits that Defendant No. 1 has no right to retain possession. He thus submits that the Second Appeal does not raise any substantial question of law.

5. I have considered the submissions made on behalf of the parties. It is not in dispute that the father of Plaintiff No. 1 has executed a mortgage deed dated 6th May 1982 in favour of Defendant Nos. 2 and 3. The agreement relied upon by Defendant No. 1 is during the subsistence of mortgage. Both the Courts have refused to accept the execution of agreement for sale. One of the grounds to refuse to accept the execution of agreement for sale is the subsistence of mortgage in favour of Defendant Nos. 2 and 3. Defendant No. 1 has admitted the execution of mortgage deed. Hence, both the Courts have rightly held that in view of subsistence of the mortgage in favour of Defendant Nos. 2 and 3, father of Plaintiff No. 1 had no authority to execute the agreement in favour of Defendant No. 1, as claimed by him. Both the Courts after

examining the evidence, have concurrently held that Defendant No. 1 failed to prove execution of any agreement for sale in his favour by the father of Plaintiff No. 1.

6. Considering the pleadings raised on behalf of Defendant No. 1 on the execution of agreement for sale on 21st April 1995, both the Courts have rejected the counter claim on the ground that the same was barred by limitation, as it was filed after the Suit was instituted on 5th October 2001.

7. In view of the admitted facts of the case, the reasons recorded by both the Courts cannot be faulted. There is no illegality or perversity in the reasons recorded by both the Courts for not accepting the execution of agreement for sale and dismissal of the counter claim.

8. Defendant No. 1 claims to be in possession based on the lease deed. However, no supporting evidence is produced regarding execution of the lease deed pursuant to which Defendant No. 1 was put in possession. There is no dispute on the ownership of the Plaintiffs. Thus, in the absence of any right to retain possession, the reasons recorded by both the Courts for passing the Decree for possession cannot be faulted. There is no illegality or perversity in the reasons recorded by both the Courts directing

Defendant No. 1 to handover possession to the Plaintiffs, who are concurrently held to be owners of the suit property. Thus, in view of the concurrent findings recorded on the facts of case, the Second Appeal would not require any consideration by this Court.

9. The Second Appeal does not raise any question of law. Hence, the Second Appeal is dismissed.

10. In view of dismissal of the Second Appeal, pending Application is disposed of as infructuous.

(GAURI GODSE, J.)